

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KIRK HENDEN,

Plaintiff,

v.

L. MILLER, et al.,

Defendants.

CASE No. 2:22-CV-95

HON. ROBERT J. JONKER

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Vermaat’s Report and Recommendation in this matter (ECF No. 27) and Plaintiff’s Objection to it. (ECF No. 28). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff’s objections. After its review, the Court finds the Magistrate Judge’s Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends granting the Defendants Miller and Niemi's motion for summary judgment on the basis of failure to exhaust. (ECF No. 22). Plaintiff did not file a response to the summary judgment motion, but has filed an Objection to the Magistrate Judge's Report and Recommendation that states, in its entirety:

I am in receipt of your April 4, 20203 R&R that I receive[d] on April 10, 2023

The material facts are still in dispute, and that I reasonably expect to obtain evidence through discovery to support this position: therefore, summary judgment should be denied or deferred until the parties have had the opportunity to complete discovery.

(ECF No. 28, PageID.119).

This objection does not meaningfully response to the Magistrate Judge's reasoning on the law of exhaustion, nor does it raise any specific objection to the Report and Recommendation.¹ An objection which is not "clear enough to enable the district court to discern those issues that are dispositive and contentions," is insufficient to permit review of the magistrate judge's report. *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). Thus, a "general objection to a magistrate's report, which fails to specify the issues of contention, does not satisfy the requirement that an objection be filed." *Id.* Plaintiff's Objection clearly fails to meet this standard.

To the extent that the Court needs to reach Plaintiff's general objection that the Magistrate Judge reached the incorrect conclusion in the Report and Recommendation, the Court disagrees with Plaintiff. The Magistrate Judge carefully and thoroughly considered the record, the parties'

¹ Plaintiff arguably forfeited his argument by failing to respond to the Defendants' summary judgment motion. Sandbagging the Magistrate's analysis by raising arguments for the first time in objections is generally impermissible. Nevertheless, Plaintiff's objections fail on the merits in any event.

arguments, and the governing law. The Magistrate Judge properly analyzed Plaintiff's claims. Nothing in Plaintiff's Objections changes the fundamental analysis. The Court concludes that Defendant's motion for summary judgment must be granted, for the very reasons detailed in the Report and Recommendation of the Magistrate Judge.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 27) is **APPROVED AND ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants Miller and Niemi's Motion for Summary Judgment (ECF No. 22) is **GRANTED**.

IT IS FURTHER ORDERED that Defendants Miller and Niemi are **DISMISSED** from this case without prejudice. This matter shall proceed against Defendant Lewis only.

Dated: April 19, 2023

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE